

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

ROGER A. HORN,

Plaintiff,

v.

CIVIL ACTION NO. 2:04-1174

TOWN OF JEFFERSON,
a municipal corporation and
POLICE CHIEF ERIC LYNCH and
PATROLMAN LILLY and
PATROLMAN REX SPURLOCK,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the Court is Defendant Daniel Mathias Lilly's Motion to Stay Proceedings because he is a member of the West Virginia Air National Guard and is currently serving overseas in Kyrgyzstan. In support of his motion, Defendant Lilly cites the 1940 version of 50 U.S.C. app. § 521. However, that version of the statute was totally amended in 2003 and the relevant provision is currently found in 50 U.S.C. app. § 522 (2004). This section provides, in part:

(b) Stay of proceedings

(1) Authority for stay

At any stage before final judgment in a civil action or proceeding in which a servicemember described in subsection (a) is a party, the court may on its own motion and shall, upon application by the servicemember, stay the action for a period of not less than 90 days, if the conditions in paragraph (2) are met.

(2) Conditions for stay

An application for a stay under paragraph (1) shall include the following:


(A) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear.

(B) A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.

50 U.S.C. app. § 522. Upon consideration of Defendant Lilly's motion, the Court finds that he has not met the requirements under subsection (b)(2). Accordingly, the Court **DENIES** Defendant Lilly's motion **without prejudice**. If Defendant Lilly so chooses, he may refile his motion in accordance with the relevant code section.

The Court **DIRECTS** the Clerk to send a copy of this written Opinion and Order to counsel of record and any unrepresented parties.

ENTER: September 30, 2005

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', written over a horizontal line.

ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE